

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

John Allen Klebe,

Plaintiff,

-vs-

Skyler Dutton, Ryan M. Wuollet, and
Joseph D. Birrenkott, West Fargo Police
Department Officers, in their individual
capacities,

Defendants.

Case No. 3:14-cv-45

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

The court has received a Report and Recommendation from the Honorable Alice R. Senechal, United States Magistrate Judge, pursuant to 28 U.S.C. § 636, recommending that the complaint be dismissed with prejudice.¹ Plaintiff John Allen Klebe objects to the Report and Recommendation, asserting the magistrate judge failed to consider the evidence in a light most favorable to him and he should be given additional time to obtain a declaration from a doctor regarding how his foot was broken.²

The court, having reviewed the Report and Recommendation, the pleadings and evidence in the record, and Klebe's objections, finds the magistrate judge's analysis is appropriate. The court hereby **ADOPTS** the Report and Recommendation in its entirety for the following reason. Any claim of excessive force by law enforcement officers is to be analyzed under the objective reasonableness standard of the Fourth Amendment.³ The evidence in the record demonstrates that given the emergency circumstances that existed

¹ Doc. #82.

² Doc. #83.

³ Graham v. Connor, 490 U.S. 386, 388 (1989).

at the time of the incident, to the extent there was force used to remove Klebe from the vehicle (assuming the evidence in a light most favorable to Klebe), it was objectively reasonable. Accordingly, the law enforcement officers are entitled to qualified immunity.

The defendants' motion for summary judgment is **GRANTED**. Klebe's request for a continuance is denied because the evidence he seeks to obtain would not alter the result. Klebe's complaint is hereby dismissed with prejudice. Any appeal would be frivolous, could not be taken in good faith, and may not be taken *in forma pauperis*.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 25th day of April, 2016.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court